

STATE OF MICHIGAN
COURT OF APPEALS

MARELLA POWELL,

Plaintiff-Appellee,

v

S. CHRISTOPHER ROMANO, TRUSTEE OF S.
CHRISTOPHER ROMANO REVOCABLE
LIVING TRUST, and PATRICIA ROMANO,

Defendants,

and

FIRST STATE BANK MORTGAGE COMPANY,
L.L.C.,

Defendant-Appellant.

UNPUBLISHED
February 21, 2012

No. 303139
Macomb Circuit Court
LC No. 2010-002529-CH

Before: GLEICHER, P.J., and METER and DONOFRIO, JJ.

PER CURIAM.

Defendant First State Bank Mortgage Company, L.L.C.,¹ appeals as of right the circuit court's opinion and order denying its motion for summary disposition and granting summary disposition in favor of plaintiff under MCR 2.116(C)(10). Because defendant was not a good-faith purchaser given that it had constructive notice of plaintiff's interest in the property as a matter of law, we affirm.

We review de novo a trial court's decision granting or denying a motion for summary disposition. *Cedroni Assoc, Inc v Tomblinson, Harburn Assoc*, 290 Mich App 577, 584; 802 NW2d 682 (2010). "A trial court may grant a motion for summary disposition under MCR 2.116(C)(10) if the pleadings, affidavits, and any other documentary evidence, when viewed in a

¹ Because First State Bank Mortgage Company, L.L.C., is the only defendant participating in this appeal, our reference to "defendant" refers to that entity only.

light most favorable to the nonmovant, show that there is no genuine issue with respect to any material fact.” *Id.* A genuine issue of material fact exists when reasonable minds might differ on an issue. *Id.* at 585.

“Michigan is a race-notice state, . . . and owners of interests in land can protect their interests by properly recording those interests.” *Lakeside Assoc v Toski Sands*, 131 Mich App 292, 298; 346 NW2d 92 (1983). A conveyance of real estate that is unrecorded is void against a subsequent purchaser in good faith who duly records the conveyance. MCL 565.29. A good-faith purchaser is one who acquires a property interest without actual or constructive notice of a defect in the vendor’s title. *Richards v Tibaldi*, 272 Mich App 522, 539; 726 NW2d 770 (2006). Constructive notice exists when a person has knowledge of facts that would lead an honest person, using ordinary caution, to make further inquiries regarding the possible rights of another in a property. *Kastle v Clemons*, 330 Mich 28, 31; 46 NW2d 450 (1951). A person with constructive notice who fails to make further inquiries “is chargeable with notice of what such inquiries and the exercise of ordinary caution would have disclosed.” *Id.*

In this case, although defendant’s mortgage was recorded first, the trial court granted summary disposition for plaintiff on the basis that defendant was not a good-faith purchaser because it had constructive notice of plaintiff’s property interest.² The trial court relied on an inspection report that described the property as an occupied, single-family home and on a homeowner’s insurance certificate that listed plaintiff as the insured. Because the home inspection did not occur until June 4, 2010, and the insurance policy period was from June 7, 2009, to June 7, 2010, neither document could have provided constructive notice of plaintiff’s property interest on January 7, 2009, when defendant S. Christopher Romano granted defendant a mortgage on the property. Thus, the trial court’s reliance on the documents was erroneous.

Nevertheless, the trial court properly granted summary disposition for plaintiff because defendant had constructive notice of plaintiff’s interest by virtue of her continuous possession and occupation of the property, a fact of which defendant was admittedly aware at the time of lending. It is well-recognized in Michigan that a person’s possession of property provides constructive notice of her property interest to others. See *Kastle*, 330 Mich at 31 (“Open, manifest and unequivocal possession of premises constitutes constructive notice of the rights of one in such possession as effectively as compliance with the recording law.”); *American Cedar & Lumber Co v Gustin*, 236 Mich 351, 359-360; 210 NW 300 (1926) (“Constructive notice by possession is equal to constructive notice by record.” [quotation marks and citation omitted]); *Delosh v Delosh*, 171 Mich 175, 177; 137 NW 81 (1912) (“Defendant[’s] claim of ignorance that complainant was in possession of the property could avail him nothing, if true. It is undisputed that complainant was residing there all the time, with his family, in possession, occupying it as a home. This was constructive notice to every one of all his rights to the property, whatever they

² A mortgage is a conveyance within the meaning of MCL 565.29. *Church & Church, Inc v A-1 Carpentry*, 281 Mich App 330, 345; 766 NW2d 30 (2008), *aff’d in part and vacated in part* on other grounds 483 Mich 885 (2009).

might be.”); *Brady v Sloman*, 156 Mich 423, 424-425; 120 NW2d 795 (1909) (“Actual possession and occupancy of land constitute a notice to every subsequent purchaser and incumbrancer of the rights and title of such occupants.” . . . “A grantee in possession of land has a title against all the world, where his deed is recorded or not.”); *Bartlett v Smith*, 146 Mich 188, 191; 109 NW 260 (1906) (Land contract vendee’s “[p]ossession was notice to the purchaser of all his rights, and he could assert his contract against defendant’s [i.e., the land owner’s] vendee, as well as against the defendant.”); *Corey v Smalley*, 106 Mich 257, 260; 64 NW 13 (1895) (“One who purchases land occupied by another than the grantor is chargeable with notice of the rights of the occupant. Possession of land by a contract purchaser is constructive notice of his rights.”).

Here, it is undisputed that plaintiff purchased the property through a land contract executed on September 26, 2003, and has resided on the property continuously since 2003, more than five years before Romano granted defendant a mortgage on the property. In accordance with Michigan precedent, plaintiff’s open and continuous possession of the property provided defendant constructive notice of her property interest as a matter of law. Defendant’s reliance on Romano’s assertion at closing on the loan that he held marketable title free and clear of all encumbrances was insufficient to satisfy its due diligence obligation to inquire regarding plaintiff’s interest in the property pursuant to *Kastle*. Accordingly, defendant was not a good-faith purchaser entitled to priority. MCL 565.29; *Richards*, 272 Mich App at 539. Therefore, the trial court properly granted plaintiff’s motion for summary disposition and denied summary disposition for defendant. Although the trial court’s ruling was based on erroneous reasoning, “we will not reverse the court’s order when the right result was reached for the wrong reason.” *Taylor v Laban*, 241 Mich App 449, 458; 616 NW2d 229 (2000).

Affirmed. Plaintiff, being the prevailing party, may tax costs pursuant to MCR 7.219.

/s/ Elizabeth L. Gleicher

/s/ Patrick M. Meter

/s/ Pat M. Donofrio